

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

SCS Carbon Transport LLC
Midwest Carbon Express CO2 Pipeline
Project Siting Application

Case No.
PU-22-391

TRANSCRIPT OF TELEPHONIC PREHEARING CONFERENCE

April 8, 2024

APPEARANCES

LAWRENCE BENDER, Fredrikson & Byron, P.A., on
behalf of Applicant SCS Carbon Transport LLC

RANDALL J. BAKKE, Bakke Grinolds Wiederholt, on
behalf of Burleigh County

STEVE J. LEIBEL and DAVID M. KNOLL, Knoll Leibel
LLP, on behalf of Intervenors/Landowners

BRIAN E. JORDE, Domina Law Group, on behalf of
Intervenors/Landowners

PATRICK T. ZOMER, Moss & Barnett, on behalf of the
City of Bismarck

KEVIN PRANIS, on behalf of Intervenor Laborers
District Council of Minnesota and North Dakota (LIUNA)

DERRICK BRAATEN, Braaten Law Firm, on behalf of
Emmons County

ZACHARY PELHAM, Special Assistant Attorney General
Advisory Counsel to the Public Service Commission

1 ALJ HOGAN: All right. It is April 8th, 2024,
2 at 1:30 p.m. This is the time and date scheduled for a
3 prehearing conference in the Public Service Commission
4 application of SCS Carbon Transport LLC. This is Public
5 Service Commission Case No. PU-22-391. And this matter
6 has been designated as OAH File No. 20230002.

7 I scheduled this prehearing conference to
8 discuss case management and procedure for our upcoming
9 round of hearings. And I think the first thing we'll do
10 is have everybody who's on or partaking in our
11 prehearing conference this afternoon enter their
12 appearance for the record. I will note that we are
13 conducting this prehearing conference through Zoom video
14 conference. And I think it might be easiest if I go
15 through the parties and just have attorneys represent
16 themselves and identify anybody else that's appearing on
17 behalf of that party.

18 So maybe I'll start with you, Mr. Pelham. Did
19 you want to note your appearance for the record?

20 MR. PELHAM: Yes. Thank you, Judge. Zachary
21 Pelham, special assistant attorney general on behalf of
22 the Public Service Commission. And it appears that
23 Victor Schock is also on the line with PSC this
24 afternoon.

25 ALJ HOGAN: All right. And on behalf of SCS

1 Carbon Transport LLC.

2 MR. BENDER: Yes, Your Honor. Lawrence Bender.
3 And I'm the only person on the phone on behalf of the
4 Applicant.

5 ALJ HOGAN: All right. Thank you.

6 And I think I will just state the landowner
7 intervenors, if counsel for them want to state their
8 appearance.

9 MR. LEIBEL: This is Steve Leibel. And
10 Mr. Jorde is also on the line.

11 ALJ HOGAN: All right. Thank you.

12 Let's see. Burleigh County.

13 MR. BAKKE: Good afternoon, Your Honor. This is
14 Randy Bakke on behalf of Burleigh County, and it's just
15 myself.

16 ALJ HOGAN: All right. Thank you.

17 Emmons County.

18 MR. BRAATEN: Yes, Your Honor. This is Derrick
19 Braaten with Braaten Law Firm on behalf of Emmons
20 County. And my paralegal, Desirae Zaste, is on the line
21 as well.

22 ALJ HOGAN: All right. Thank you.

23 And City of Bismarck.

24 MR. ZOMER: Good afternoon, Your Honor. Pat
25 Zomer from the law firm of Moss & Barnett on behalf of

1 the City of Bismarck.

2 ALJ HOGAN: All right. Thank you.

3 The labor union.

4 MR. PRANIS: Kevin Pranis on behalf of Laborers
5 District Council (indiscernible).

6 ALJ HOGAN: All right. Thank you.

7 And I think that is everybody except I have one
8 party that's called in. It's a 701-255-2010. Can I ask
9 who that number belongs to?

10 MR. KNOLL: Yes. I'm not sure if you can hear
11 me. This is Attorney Dave Knoll with the landowner
12 intervenors.

13 ALJ HOGAN: All right. Thank you. I can hear
14 you. Thank you.

15 MR. KNOLL: Okay.

16 ALJ HOGAN: All right. Just to start off I just
17 wanted to note, in case it wasn't clear already from the
18 commission meetings that have been held regarding the
19 upcoming hearings, but the Commission is anticipating
20 that the week-long hearing scheduled for April 22nd to
21 be the primary hearing for this round of the hearings.
22 So they would like a bulk of the hearing to happen on
23 those dates. And then the Wahpeton and Linton hearings
24 have been scheduled mainly to hear -- or to take public
25 comment and hear from landowners. So we have that. And

1 then the April 22nd hearing, the Commission is allowing
2 public comment for that hearing as well.

3 And I understand it's the Commission's request
4 to do what we did in some of the prior hearings, which
5 is to have blocks of public hearing -- or public comment
6 throughout the hearing. So as much as possible I'm
7 going to try to do that in convenient times, hopefully
8 maybe in the morning and after lunch, or something like
9 that, keeping in mind that we don't really want to break
10 up witness testimony.

11 Likewise, we'll try to end each day around 5 or
12 6:00 as much as possible. Again, if we're towards the
13 end of witness testimony for a particular witness, we
14 might try to finish that up, but I think that's going to
15 be a goal, to try to end each day around those times.

16 And with that in mind, I kind of wanted to talk
17 about time management and where we're at on that. Thank
18 you for the parties that did file witness lists last
19 week. I appreciate that.

20 And I did put in the prehearing notice that I
21 was going to ask about anticipated length of testimony.
22 And I know sometimes that's difficult to estimate before
23 we really get into the hearing and obviously understand
24 parties can't control time spent on cross-examination.
25 So, you know, if you could give me an idea of how much

1 time you think your witnesses are going to present, that
2 would be helpful.

3 And I think I'll start with you, Mr. Bender,
4 because I do anticipate that Summit's witnesses will go
5 first.

6 MR. BENDER: Sure. Thank you, Your Honor. I
7 don't know if you have in front of you the list of
8 witnesses that I prepared, but it might be easiest to
9 just follow down that list, if that works for you, Your
10 Honor.

11 ALJ HOGAN: Yep, I do have it. Thank you.

12 MR. BENDER: So I don't believe we'd necessarily
13 call them in this order, we haven't made that decision
14 yet, but if we can just go down the list.

15 I have Wade Boeshans. I'm thinking that his
16 testimony, his direct testimony, would probably be in
17 the hour to an hour and a half of testimony. James
18 Powell is, I believe, going to be our primary witness,
19 and I would guess that his direct testimony is probably
20 going to be in that three-hour range. Jason Zoller,
21 probably to be conservative, I would just say an hour,
22 maybe 30 minutes, so let's just say an hour. Jon
23 Schmidt, similar to Jason Zoller, in that half hour to
24 an hour range. I have on here David Daum. We're likely
25 not to call him at this point in time. We think some of

1 that information can be covered with another witness.
2 But if he is called, it's likely only going to be 30,
3 45 minutes. And then Jeff Olson is probably in that 35
4 to 45 minutes, but to be conservative, let's just say an
5 hour.

6 And then on the may-call witnesses or may
7 testify, Dan Pickering, I'm thinking 30 minutes; Harold
8 Hamm, 30 minutes; Mike Lundkin (phonetic), possibly an
9 hour; and Brian Lucht (phonetic), possibly an hour.

10 ALJ HOGAN: All right. Thank you. That's
11 helpful. I think -- go ahead.

12 MR. BENDER: Sorry, Your Honor, but I'll have a
13 better idea in -- perhaps in a week or so and be happy
14 to provide the -- Your Honor with more information as we
15 know more.

16 ALJ HOGAN: Yeah, I guess I probably won't
17 require you to do that, but if you want to do that ahead
18 of time, that would be appreciated from my point. And
19 it makes it easier for me to plan stuff out if I have a
20 better idea of those type of items.

21 Okay. And then on behalf of, let's see, the
22 landowner intervenors.

23 I don't know, Mr. Leibel, are you the one to
24 speak on that?

25 MR. LEIBEL: Mr. Brian Jorde can speak on that.

1 ALJ HOGAN: All right. And I guess maybe
2 my first question for you, Mr. Jorde, based off of the
3 comments in your witness list, do you anticipate
4 appearing at all through that week? I know you were one
5 of the parties that expressed some conflicts with that
6 week. So I guess my first question is: are you
7 available at all that week?

8 MR. JORDE: No, not right now unless, you know,
9 all sorts of things -- stars were to align and things
10 were to be canceled. But what we didn't want to have
11 happen is Summit to raise some type of waiver argument
12 or similar that we failed to even participate so we
13 somehow couldn't even request a technical conference.
14 And by "participate," I mean in the witness list,
15 etcetera, so they didn't accuse us of, like, sandbagging
16 or something. So this is filed solely to preserve that
17 part of the record and so we're not waiving. And this
18 would be the totality of the people that, had we been
19 able to participate, we may have called at that time.

20 So I can run through everything, or if that
21 affects how you want to move forward.

22 ALJ HOGAN: Well, maybe I'll start with this.
23 And maybe it has been filed already and I haven't seen
24 it, but you are planning to request the technical
25 hearing or additional days for technical hearing?

1 MR. JORDE: Correct.

2 ALJ HOGAN: Okay. And, yeah, I looked through
3 your witness list and it's a pretty healthy list. And
4 do you have any idea of how much time you're going to
5 need? And maybe it's kind of a two-part thing, but do
6 you anticipate calling all of these witnesses?

7 MR. JORDE: No. No. Definitely -- definitely
8 will not call all. I mean, obviously, depending how the
9 -- you know, Summit, they've got the burden of proof, we
10 don't, so depending how their witnesses play out, maybe
11 none of these might be necessary. We just have to see.

12 But obviously, for instance, like Mr. Powell,
13 he's going to be on their list so that's not really a
14 duplicate. You know, Mr. Rastetter or Mr. Blank --
15 maybe I should just go in order -- if we have to
16 subpoena them if they're not going to be there and then
17 that's a whole process, but we just put them on there
18 because we think those are the people that have material
19 information that the PSC would be interested in. And
20 then we've got Mr. Powell.

21 And Mr. Pirolli, he's a commercial person.
22 Well, I think he quit or retired, I'm not privy to that,
23 but in any event he's not there, but he's the mastermind
24 kind of behind the economics of this so I'm not sure who
25 they're going to have. Maybe that Wade gentleman is

1 going to cover that.

2 And then we've got some other Summit people, all
3 of whom may be unnecessary, Your Honor, again, based
4 upon how their direct testimony comes in.

5 So I think some of the key witnesses have to do
6 with discovery disputes and prior orders, an August 4th
7 order that basically granted confidential protection of
8 some information. We're going to ask for either
9 reconsideration or make another run at that because we
10 think that the authors, the people that have prepared
11 any report that the PSC has and no one else has are
12 obviously fair game because certainly you could make a
13 decision based on information that the parties weren't
14 able to cross-examine on. So we don't know who those
15 people are, they don't tell us, but those are
16 placeholders, sub I, J, and K.

17 And then you can see the landowners. Landowners
18 go from L down to Q. You know, Mary Irmén and Scott are
19 husband and wife. I would suspect maybe one would
20 testify, and maybe it's 30, 45 minutes. Mr. Malloy has
21 never testified and so I suspect he could be longer, an
22 hour time range. And then I suspect we'd have one
23 representative from APH Farms, probably in that hour
24 timeframe or so as well, but I listed all three just to
25 be safe.

1 Mr. Riley, Watford City, we have to subpoena him
2 or maybe he'd volunteer to come down, but I'm going to
3 have to call him. And same with Mr. Tharaldson. I
4 don't know if he's interested in coming, but I'll have
5 to give him a call. And same with the president of the
6 ethanol plant. So those are just kind of placeholders.
7 And then Lynn Helms, Mineral Resources, I'm going to
8 have to give him a call so I'm not sure if he's willing
9 to testify.

10 And then the others looks like are experts that
11 have been used in the past, used by us or other parties
12 against Summit in other states. Again, so Summit is
13 very familiar with their testimony.

14 And I think that takes us through, yeah, the
15 balance of our list.

16 ALJ HOGAN: So in total for technical hearing,
17 do you know -- length of that hearing, do you know what
18 your request is going to be?

19 MR. JORDE: Oh, gosh, good question. I mean,
20 you know, unfortunately, since, again, we're kind of
21 responding, it really depends how much, you know, comes
22 out of Summit on this first go-around. You know, like I
23 said, our -- the landowner witnesses, maybe three, three
24 and a half hours to get the kind of -- because we only
25 have three families left in Burleigh and Morton County

1 and, hopefully, Summit will just reroute around them so
2 we don't have to deal with that. But for the other
3 folks, oh, gosh, I mean, you know, at least a solid
4 eight hours to get through the rest of them. And I
5 don't know how much cross there would be.

6 ALJ HOGAN: Okay. All right. Thank you.

7 Then I think the third list I got was from
8 Burleigh County. Mr. Bakke, kind of the same questions.
9 I know you expressed some conflicts or a conflict with
10 that April -- week of April 22nd. Are you able to
11 attend any days during that week?

12 MR. BAKKE: I am not. My jury trial has not
13 changed which starts the following Monday. And that's a
14 case that went to the North Dakota Supreme Court after
15 the first jury trial and was reversed, so it's a whole
16 host of new issues in the case that weren't allowed in
17 the first jury trial and that's why it's a two-week jury
18 trial this time. And I have, of course, trial
19 preparation but also numerous meetings with witnesses
20 who will be testifying at the trial so I'm not available
21 that week at all. And I don't anticipate that trial
22 would be postponed for any reason.

23 And so, you know, I would echo the comments that
24 Mr. Jorde did, that we also submitted our witness list
25 with the idea in mind that we are requesting a technical

1 hearing as well to present our witnesses and to
2 cross-examine the witnesses presented by Summit and
3 possibly others during the week of April 22 through 26
4 in -- out of an abundance of caution so as there was no
5 waiver argument by Summit or (indiscernible) waiver
6 argument, we did that.

7 In relation to our witnesses that we've
8 identified on our witness list, for the ones that we
9 would be calling and setting aside the Summit witnesses,
10 I would estimate we would need about a full day for the
11 ones we've disclosed with Mr. Bitner being the first one
12 and Mr. Jennings being the last one on that list.

13 And then in terms of the Summit witnesses, we
14 have requested them to produce witnesses on five
15 different topics. It very well could be many of those
16 topics will be addressed by the Summit witnesses at the
17 initial hearings on April 22 through 26. I'm assuming
18 those topics will be because they're for the application
19 and it's my understanding those are some of the things
20 the PSC indicated after denying Summit's application
21 that they wanted to hear evidence on from Summit, but we
22 also want to cross-examine Summit's witnesses who
23 testified on whatever they testified to on April 22
24 through 26 and are operating under the understanding
25 that we won't have to subpoena those witnesses, that

1 they will be required to voluntarily appear so that we
2 could conduct our cross-examination at that time.

3 So my guesstimate at this point is I would need
4 about two days to complete everything that we would want
5 to present and to cross-examine Summit witnesses on.

6 And I did indicate in our witness list some
7 dates that both Mr. Jorde and the landowner intervenors
8 are available and I am as well, which is prior to that
9 May 24 date that Commissioner Christmann talked about
10 that he would like to see those hearings completed by.

11 ALJ HOGAN: And just so I'm clear, Mr. Bakke,
12 have you made a request for the technical hearing yet?
13 I haven't seen one, but it doesn't mean you haven't made
14 it.

15 MR. BAKKE: No. No, I have not. I was waiting
16 to see what was going to happen here today.

17 ALJ HOGAN: Sure.

18 MR. BAKKE: We certainly plan to do that, but I
19 thought whatever Your Honor decided and whatever the
20 presentation was by Summit in terms of their witnesses
21 might affect that.

22 MR. PELHAM: Judge.

23 ALJ HOGAN: Yep, go ahead, Mr. Pelham.

24 MR. PELHAM: Mr. Bakke's request says Burleigh
25 County requests a technical hearing as proposed by the

1 PSC to be scheduled on two days. So I think he has
2 requested a technical hearing. That's how I read it, at
3 least.

4 MR. BAKKE: Yeah, I did. But in response to the
5 judge's question, I kind of implied, perhaps
6 incorrectly, that she wanted a separate request or a
7 separate document in that regard. But you're correct,
8 Mr. Pelham, we did, in fact, make that request.

9 If Your Honor would like something further, we
10 can certainly do a stand-alone document or something of
11 that nature.

12 ALJ HOGAN: I guess my preference would be if we
13 had a separate document that was just kind of dedicated
14 to that request versus being buried in a witness list --
15 maybe not "buried" is the right word but included in a
16 witness list, I think for the docket might be better or
17 more clear to somebody that's just going through the
18 docket.

19 MR. BAKKE: Yeah, I can certainly do that.

20 ALJ HOGAN: Okay. And same with you, Mr. Jorde,
21 I think you had it in your witness list as well, if you
22 just want to send in a short document with that request
23 on it, it might be helpful.

24 MR. JORDE: We will do that. Thank you.

25 ALJ HOGAN: All right. Thank you.

1 So it's my understanding that I think the
2 Commission's aware that there's going to be -- well,
3 obviously it's in your witness list, but we're
4 anticipating the request for that technical hearing.

5 And I'll ask Mr. Pelham, maybe he has more
6 information, but it's my understanding they have not yet
7 talked about the length of any potential hearing date,
8 but the -- my understanding is they would like any
9 witness -- well, specifically for Summit's witnesses to
10 be available for cross-examination for that technical
11 hearing but are willing to allow them to appear through
12 video conference or something like that so that they
13 wouldn't need to come back for a second hearing. So
14 that's my understanding of where they're kind of at with
15 that technical hearing.

16 And, Mr. Pelham, you can either correct me if
17 I'm incorrect or if you have more information that would
18 be helpful.

19 MR. PELHAM: I don't have any other information,
20 Judge. I think what you stated is correct. Any
21 witnesses that are called, at least (indiscernible)
22 April 22nd by Summit as witnesses, any parties
23 requesting a technical hearing, which, as I understand
24 it, both Mr. Jorde's clients and Mr. Bakke's client have
25 requested, they're going to follow up with a more formal

1 request, but effectively they've told us today and their
2 witness list indicate that they're asking for a
3 technical hearing, that those Summit witnesses that
4 testify on direct will be made available by Summit but
5 have to be made available by Summit to be subject to
6 cross-examination at a technical hearing which,
7 effectively, is an evidentiary hearing on the matter,
8 and that the parties, after requesting such a hearing,
9 be entitled to call their own witnesses if they so
10 desire at that hearing and present evidence at that
11 technical hearing.

12 Thank you.

13 ALJ HOGAN: All right. Thank you.

14 Those are the three parties that filed witness
15 lists. And I just want to make sure, were any of the
16 other parties anticipating calling witnesses or desiring
17 to call witnesses at the April 22nd hearing?

18 MR. PRANIS: Your Honor, Kevin Pranis for
19 Laborers. I apologize. I missed the order giving the
20 deadline to provide witnesses, but it was our intention
21 to provide up to three witnesses. They wouldn't take
22 very long. So if that's acceptable to Your Honor and to
23 other parties.

24 ALJ HOGAN: Mr. Pranis, if you wouldn't mind
25 just shooting me a short witness list with the names of

1 those witnesses, I'd appreciate that.

2 MR. PRANIS: Yes, Your Honor.

3 ALJ HOGAN: And do you have -- anticipate,
4 Mr. Pranis, how long your -- you might need for witness
5 testimony?

6 MR. PRANIS: I would say an hour and a half at
7 the very outside. Probably an hour.

8 ALJ HOGAN: Okay. Thank you.

9 Anybody else?

10 MR. ZOMER: Your Honor, this is Pat Zomer. The
11 City did not anticipate putting on any affirmative
12 witnesses (indiscernible) cross-examination of the
13 (indiscernible).

14 ALJ HOGAN: Okay. Thank you.

15 MR. BRAATEN: Your Honor, this is Derrick
16 Braaten for Emmons County. We are also not planning to
17 put on any witnesses at the April hearing -- may at the
18 hearing down in Linton -- but in terms of the hearings
19 at the end of the month would reserve our right to
20 cross-examine and may participate but likely will not be
21 playing much of a substantive role.

22 ALJ HOGAN: All right. Thank you.

23 All right. Well, those are the topics I wanted
24 to cover this afternoon. Did any of the parties have
25 other issues that they wanted to address? And rather

1 than have everybody chime in, maybe I'll just run down
2 the list.

3 Mr. Bender, did you have anything else you
4 wanted to address this afternoon?

5 MR. BENDER: Not at this time, Your Honor.

6 ALJ HOGAN: All right. Mr. Jorde.

7 MR. JORDE: No. We'll probably be back, Your
8 Honor, depending what Summit's discovery responses and
9 position are, but nothing at this moment. Thank you.

10 ALJ HOGAN: All right. Mr. Bakke.

11 MR. BAKKE: Nothing at this time, Your Honor.

12 ALJ HOGAN: All right. Mr. Zomer.

13 MR. ZOMER: Maybe more of a clarifying question
14 or just something to put out for consideration, but if
15 any areas of cross-examination would likely overlap with
16 at least the Summit witnesses identified in Mr. Bakke's
17 email -- or email requesting different type of witnesses
18 be available, those are the witnesses and the topics
19 that we would be interested in also cross-examining on.
20 And so if it makes more sense for us to do that as part
21 of the technical conference, we can accommodate that.
22 If Your Honor would prefer that we do it as part of the
23 April hearing, we could do that too.

24 ALJ HOGAN: Well, I think on that topic, as much
25 coordination between the parties, especially the

1 intervenors, that's possible, I think the Commission
2 would appreciate that. And I think, you know, they went
3 through great effort to schedule this week hearing on
4 April 22nd, so as much of that hearing and as much of
5 the cross-examination that can happen that week, I think
6 that's what the expectation is.

7 So, Mr. Zomer, I think they would want the
8 opposite. So instead of deferring to the technical
9 hearing, if we could get it in that first week block,
10 that would be their preference. Those are my thoughts
11 on that.

12 MR. ZOMER: Understood. Thank you.

13 ALJ HOGAN: All right. Mr. Braaten, any other
14 issues you wanted to address?

15 MR. BRAATEN: No, Your Honor.

16 ALJ HOGAN: Mr. Pranis?

17 MR. PRANIS: Maybe this isn't a question that
18 can be answered right now, Your Honor, but I see that a
19 week is blocked off. Trying to manage our own limited
20 resources, I'm wondering if, given the technical hearing
21 and major intervenor parties not being a part, is there
22 any expectation it might be less than five days of
23 hearings?

24 ALJ HOGAN: Yeah, I think that's likely. And I
25 think from the beginning the Commission's thought was

1 they would block off a week and when we're done we're
2 done. If it takes three days, you know, at the end of
3 three days we're done. If it takes five days, we use
4 the five days. I guess we'll see. A lot of that is
5 dependent upon the amount of public testimony that's
6 requested so -- and that obviously we won't know until
7 the day of.

8 So I don't know if I can give you a good idea of
9 anticipated length, but given what I've heard today, I'm
10 guessing we will not need all week. I just don't know
11 how long.

12 MR. PRANIS: Thank you. That's helpful.

13 ALJ HOGAN: All right. Mr. Pelham, any other
14 issues you wanted to address this afternoon?

15 MR. PELHAM: No, Your Honor. Thank you.

16 ALJ HOGAN: And, Mr. Schock, I'm going to ask
17 you just to make sure we haven't missed anything that
18 you might be thinking of.

19 MR. SCHOCK: No. I think you covered it very
20 well, Judge. Thank you.

21 ALJ HOGAN: All right. Well, thank you all for
22 joining in today. I think this conversation was
23 productive.

24 And I'll just note for the record that it's
25 2:02 p.m. That will conclude our prehearing conference.

1 And I hope everybody has a nice afternoon.

2 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

3 UNIDENTIFIED SPEAKER: Thank you.

4 ALJ HOGAN: Thanks. Bye-bye.

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CERTIFICATE OF TRANSCRIPTIONIST

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Dated this date of October 15, 2025.

Lisa A. Hulm

LISA A. HULM, CET-783

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1	addressed [1] - 13:16 affect [1] - 14:21 affects [1] - 8:21 afternoon [8] - 2:11, 2:24, 3:13, 3:24, 18:24, 19:4, 21:14, 22:1 ahead [3] - 7:11, 7:17, 14:23 align [1] - 8:9 allow [1] - 16:11 allowed [1] - 12:16 allowing [1] - 5:1 alone [1] - 15:10 amount [1] - 21:5 answered [1] - 20:18 anticipate [6] - 6:4, 8:3, 9:6, 12:21, 18:3, 18:11 anticipated [2] - 5:21, 21:9 anticipating [3] - 4:19, 16:4, 17:16 APH [1] - 10:23 apologize [1] - 17:19 appear [2] - 14:1, 16:11 appearance [3] - 2:12, 2:19, 3:8 appearing [2] - 2:16, 8:4 Applicant [1] - 3:4 application [3] - 2:4, 13:18, 13:20 appreciate [3] - 5:19, 18:1, 20:2 appreciated [1] - 7:18 April [13] - 2:1, 4:20, 5:1, 12:10, 13:3, 13:17, 13:23, 16:22, 17:17, 18:17, 19:23, 20:4 areas [1] - 19:15 argument [3] - 8:11, 13:5, 13:6 aside [1] - 13:9 assistant [1] - 2:21 assuming [1] - 13:17 attend [1] - 12:11 Attorney [1] - 4:11 attorney [1] - 2:21 attorneys [1] - 2:15 August [1] - 10:6 authors [1] - 10:10 available [7] - 8:7, 12:20, 14:8, 16:10, 17:4, 17:5, 19:18 aware [1] - 16:2	12:12, 14:15, 14:18, 15:4, 15:19, 19:11 Bakke [4] - 3:14, 12:8, 14:11, 19:10 Bakke's [3] - 14:24, 16:24, 19:16 balance [1] - 11:15 Barnett [1] - 3:25 based [3] - 8:2, 10:3, 10:13 beginning [1] - 20:25 behalf [9] - 2:17, 2:21, 2:25, 3:3, 3:14, 3:19, 3:25, 4:4, 7:21 behind [1] - 9:24 belongs [1] - 4:9 BENDER [5] - 3:2, 6:6, 6:12, 7:12, 19:5 Bender [3] - 3:2, 6:3, 19:3 better [3] - 7:13, 7:20, 15:16 between [1] - 19:25 Bismarck [2] - 3:23, 4:1 Bitner [1] - 13:11 blank [1] - 9:14 block [2] - 20:9, 21:1 blocked [1] - 20:19 blocks [1] - 5:5 Boeshans [1] - 6:15 BRAATEN [3] - 3:18, 18:15, 20:15 Braaten [4] - 3:19, 18:16, 20:13 break [1] - 5:9 Brian [2] - 7:9, 7:25 bulk [1] - 4:22 burden [1] - 9:9 buried [2] - 15:14, 15:15 Burleigh [5] - 3:12, 3:14, 11:25, 12:8, 14:24 bye [2] - 22:4 bye-bye [1] - 22:4	clarifying [1] - 19:13 clear [3] - 4:17, 14:11, 15:17 client [1] - 16:24 clients [1] - 16:24 coming [1] - 11:4 comment [3] - 4:25, 5:2, 5:5 comments [2] - 8:3, 12:23 commercial [1] - 9:21 Commission's [3] - 5:3, 16:2, 20:25 complete [1] - 14:4 completed [1] - 14:10 conclude [1] - 21:25 conduct [1] - 14:2 conducting [1] - 2:13 conference [9] - 2:3, 2:7, 2:11, 2:13, 2:14, 8:13, 16:12, 19:21, 21:25 confidential [1] - 10:7 conflict [1] - 12:9 conflicts [2] - 8:5, 12:9 conservative [2] - 6:21, 7:4 consideration [1] - 19:14 control [1] - 5:24 convenient [1] - 5:7 conversation [1] - 21:22 coordination [1] - 19:25 correct [4] - 9:1, 15:7, 16:16, 16:20 Council [1] - 4:5 counsel [1] - 3:7 County [8] - 3:12, 3:14, 3:17, 3:20, 11:25, 12:8, 14:25, 18:16 course [1] - 12:18 Court [1] - 12:14 cover [2] - 10:1, 18:24 covered [2] - 7:1, 21:19 cross [14] - 5:24, 10:14, 12:5, 13:2, 13:22, 14:2, 14:5, 16:10, 17:6, 18:12, 18:20, 19:15, 19:19, 20:5 cross-examination [7] - 5:24, 14:2, 16:10, 17:6, 18:12, 19:15, 20:5 cross-examine [5] - 10:14, 13:2, 13:22, 14:5, 18:20	cross-examining [1] - 19:19
1:30 [1] - 2:2			D	
2			Dakota [1] - 12:14 Dan [1] - 7:7 date [3] - 2:2, 14:9, 16:7 dates [2] - 4:23, 14:7 Daum [1] - 6:24 Dave [1] - 4:11 David [1] - 6:24 days [9] - 8:25, 12:11, 14:4, 15:1, 20:22, 21:2, 21:3, 21:4 deadline [1] - 17:20 deal [1] - 12:2 decided [1] - 14:19 decision [2] - 6:13, 10:13 dedicated [1] - 15:13 deferring [1] - 20:8 definitely [2] - 9:7 denying [1] - 13:20 dependent [1] - 21:5 Derrick [2] - 3:18, 18:15 designated [1] - 2:6 Desirae [1] - 3:20 desire [1] - 17:10 desiring [1] - 17:16 different [2] - 13:15, 19:17 difficult [1] - 5:22 direct [4] - 6:16, 6:19, 10:4, 17:4 disclosed [1] - 13:11 discovery [2] - 10:6, 19:8 discuss [1] - 2:8 disputes [1] - 10:6 District [1] - 4:5 docket [2] - 15:16, 15:18 document [4] - 15:7, 15:10, 15:13, 15:22 done [3] - 21:1, 21:2, 21:3 down [6] - 6:9, 6:14, 10:18, 11:2, 18:18, 19:1 duplicate [1] - 9:14 during [2] - 12:11, 13:3	
20230002 [1] - 2:6 2024 [1] - 2:1 22 [3] - 13:3, 13:17, 13:23 22nd [6] - 4:20, 5:1, 12:10, 16:22, 17:17, 20:4 24 [1] - 14:9 26 [3] - 13:3, 13:17, 13:24 2:02 [1] - 21:25				
3				
30 [5] - 6:22, 7:2, 7:7, 7:8, 10:20 35 [1] - 7:3				
4				
45 [3] - 7:3, 7:4, 10:20 4th [1] - 10:6				
5				
5 [1] - 5:11				
6				
6:00 [1] - 5:12				
7				
701-255-2010 [1] - 4:8				
8				
8th [1] - 2:1				
A	B	C		
able [3] - 8:19, 10:14, 12:10 abundance [1] - 13:4 acceptable [1] - 17:22 accommodate [1] - 19:21 accuse [1] - 8:15 additional [1] - 8:25 address [4] - 18:25, 19:4, 20:14, 21:14	BAKKE [7] - 3:13,	canceled [1] - 8:10 Carbon [2] - 2:4, 3:1 Case [1] - 2:5 case [4] - 2:8, 4:17, 12:14, 12:16 caution [1] - 13:4 certainly [4] - 10:12, 14:18, 15:10, 15:19 changed [1] - 12:13 chime [1] - 19:1 Christmann [1] - 14:9 City [4] - 3:23, 4:1, 11:1, 18:11		
			E	
			easier [1] - 7:19 easiest [2] - 2:14, 6:8 echo [1] - 12:23	

economics ^[1] - 9:24 effectively ^[2] - 17:1, 17:7 effort ^[1] - 20:3 eight ^[1] - 12:4 either ^[2] - 10:8, 16:16 email ^[2] - 19:17 Emmons ^[3] - 3:17, 3:19, 18:16 end ^[5] - 5:11, 5:13, 5:15, 18:19, 21:2 enter ^[1] - 2:11 entitled ^[1] - 17:9 especially ^[1] - 19:25 estimate ^[2] - 5:22, 13:10 etcetera ^[1] - 8:15 ethanol ^[1] - 11:6 event ^[1] - 9:23 evidence ^[2] - 13:21, 17:10 evidentiary ^[1] - 17:7 examination ^[7] - 5:24, 14:2, 16:10, 17:6, 18:12, 19:15, 20:5 examine ^[5] - 10:14, 13:2, 13:22, 14:5, 18:20 examining ^[1] - 19:19 except ^[1] - 4:7 expectation ^[2] - 20:6, 20:22 experts ^[1] - 11:10 expressed ^[2] - 8:5, 12:9	front ^[1] - 6:7 full ^[1] - 13:10 G game ^[1] - 10:12 general ^[1] - 2:21 gentleman ^[1] - 9:25 given ^[2] - 20:20, 21:9 go-around ^[1] - 11:22 goal ^[1] - 5:15 gosh ^[2] - 11:19, 12:3 granted ^[1] - 10:7 great ^[1] - 20:3 guess ^[6] - 6:19, 7:16, 8:1, 8:6, 15:12, 21:4 guessing ^[1] - 21:10 guesstimate ^[1] - 14:3 H half ^[4] - 6:17, 6:23, 11:24, 18:6 Hamm ^[1] - 7:8 happy ^[1] - 7:13 Harold ^[1] - 7:7 healthy ^[1] - 9:3 hear ^[5] - 4:10, 4:13, 4:24, 4:25, 13:21 heard ^[1] - 21:9 hearing ^[36] - 4:20, 4:21, 4:22, 5:1, 5:2, 5:5, 5:6, 5:23, 8:25, 11:16, 11:17, 13:1, 14:12, 14:25, 15:2, 16:4, 16:7, 16:11, 16:13, 16:15, 16:23, 17:3, 17:6, 17:7, 17:8, 17:10, 17:11, 17:17, 18:17, 18:18, 19:23, 20:3, 20:4, 20:9, 20:20 hearings ^[9] - 2:9, 4:19, 4:21, 4:23, 5:4, 13:17, 14:10, 18:18, 20:23 held ^[1] - 4:18 Helms ^[1] - 11:7 helpful ^[5] - 6:2, 7:11, 15:23, 16:18, 21:12 Honor ^[24] - 3:2, 3:13, 3:18, 3:24, 6:6, 6:10, 7:12, 7:14, 10:3, 14:19, 15:9, 17:18, 17:22, 18:2, 18:10, 18:15, 19:5, 19:8, 19:11, 19:22, 20:15, 20:18, 21:15, 22:2 hope ^[1] - 22:1 hopefully ^[2] - 5:7, 12:1	host ^[1] - 12:16 hour ^[14] - 6:17, 6:20, 6:21, 6:22, 6:23, 6:24, 7:5, 7:9, 10:22, 10:23, 18:6, 18:7 hours ^[2] - 11:24, 12:4 husband ^[1] - 10:19 I idea ^[6] - 5:25, 7:13, 7:20, 9:4, 12:25, 21:8 identified ^[2] - 13:8, 19:16 identify ^[1] - 2:16 implied ^[1] - 15:5 included ^[1] - 15:15 incorrect ^[1] - 16:17 incorrectly ^[1] - 15:6 indicate ^[2] - 14:6, 17:2 indicated ^[1] - 13:20 indiscernible ^[3] - 13:5, 16:21, 18:12 indiscernible ^[2] - 4:5, 18:13 information ^[8] - 7:1, 7:14, 9:19, 10:8, 10:13, 16:6, 16:17, 16:19 initial ^[1] - 13:17 instance ^[1] - 9:12 instead ^[1] - 20:8 intention ^[1] - 17:20 interested ^[3] - 9:19, 11:4, 19:19 intervenor ^[1] - 20:21 intervenor ^[5] - 3:7, 4:12, 7:22, 14:7, 20:1 Irmen ^[1] - 10:18 issues ^[4] - 12:16, 18:25, 20:14, 21:14 items ^[1] - 7:20 J James ^[1] - 6:17 Jason ^[2] - 6:20, 6:23 Jeff ^[1] - 7:3 Jennings ^[1] - 13:12 joining ^[1] - 21:22 Jon ^[1] - 6:22 Jorde ^[7] - 3:10, 7:25, 8:2, 12:24, 14:7, 15:20, 19:6 JORDE ^[6] - 8:8, 9:1, 9:7, 11:19, 15:24, 19:7 Jorde's ^[1] - 16:24	Judge ^[3] - 2:20, 16:20, 21:20 judge ^[1] - 14:22 judge's ^[1] - 15:5 jury ^[4] - 12:12, 12:15, 12:17 K keeping ^[1] - 5:9 Kevin ^[2] - 4:4, 17:18 key ^[1] - 10:5 kind ^[10] - 5:16, 9:5, 9:24, 11:6, 11:20, 11:24, 12:8, 15:5, 15:13, 16:14 KNOLL ^[2] - 4:10, 4:15 Knoll ^[1] - 4:11 L labor ^[1] - 4:3 Laborers ^[2] - 4:4, 17:19 landowner ^[5] - 3:6, 4:11, 7:22, 11:23, 14:7 landowners ^[3] - 4:25, 10:17 last ^[2] - 5:18, 13:12 Law ^[1] - 3:19 law ^[1] - 3:25 Lawrence ^[1] - 3:2 least ^[4] - 12:3, 15:3, 16:21, 19:16 left ^[1] - 11:25 LEIBEL ^[2] - 3:9, 7:25 Leibel ^[2] - 3:9, 7:23 length ^[4] - 5:21, 11:17, 16:7, 21:9 less ^[1] - 20:22 likely ^[5] - 6:24, 7:2, 18:20, 19:15, 20:24 likewise ^[1] - 5:11 limited ^[1] - 20:19 line ^[3] - 2:23, 3:10, 3:20 Linton ^[2] - 4:23, 18:18 list ^[21] - 6:7, 6:9, 6:14, 8:3, 8:14, 9:3, 9:13, 11:15, 12:7, 12:24, 13:8, 13:12, 14:6, 15:14, 15:16, 15:21, 16:3, 17:2, 17:25, 19:2 listed ^[1] - 10:24 lists ^[2] - 5:18, 17:15 LLC ^[2] - 2:4, 3:1 looked ^[1] - 9:2 looks ^[1] - 11:10	Lucht ^[1] - 7:9 lunch ^[1] - 5:8 Lundkin ^[1] - 7:8 Lynn ^[1] - 11:7 M major ^[1] - 20:21 Malloy ^[1] - 10:20 manage ^[1] - 20:19 management ^[2] - 2:8, 5:17 Mary ^[1] - 10:18 mastermind ^[1] - 9:23 material ^[1] - 9:18 matter ^[2] - 2:5, 17:7 may-call ^[1] - 7:6 mean ^[5] - 8:14, 9:8, 11:19, 12:3, 14:13 meetings ^[2] - 4:18, 12:19 might ^[10] - 2:14, 5:14, 6:8, 9:11, 14:21, 15:16, 15:23, 18:4, 20:22, 21:18 Mike ^[1] - 7:8 mind ^[4] - 5:9, 5:16, 12:25, 17:24 Mineral ^[1] - 11:7 minutes ^[6] - 6:22, 7:3, 7:4, 7:7, 7:8, 10:20 missed ^[2] - 17:19, 21:17 moment ^[1] - 19:9 Monday ^[1] - 12:13 month ^[1] - 18:19 morning ^[1] - 5:8 Morton ^[1] - 11:25 Moss ^[1] - 3:25 move ^[1] - 8:21 N names ^[1] - 17:25 nature ^[1] - 15:11 necessarily ^[1] - 6:12 necessary ^[1] - 9:11 need ^[6] - 9:5, 13:10, 14:3, 16:13, 18:4, 21:10 never ^[1] - 10:21 new ^[1] - 12:16 nice ^[1] - 22:1 none ^[1] - 9:11 North ^[1] - 12:14 note ^[4] - 2:12, 2:19, 4:17, 21:24 nothing ^[2] - 19:9, 19:11 notice ^[1] - 5:20
--	---	--	--	--

number ^[1] - 4:9 numerous ^[1] - 12:19	plan ^[2] - 7:19, 14:18 planning ^[2] - 8:24, 18:16 plant ^[1] - 11:6 play ^[1] - 9:10 playing ^[1] - 18:21 point ^[3] - 6:25, 7:18, 14:3 position ^[1] - 19:9 possible ^[3] - 5:6, 5:12, 20:1 possibly ^[3] - 7:8, 7:9, 13:3 postponed ^[1] - 12:22 potential ^[1] - 16:7 Powell ^[3] - 6:18, 9:12, 9:20 PRANIS ^[6] - 4:4, 17:18, 18:2, 18:6, 20:17, 21:12 Pranis ^[5] - 4:4, 17:18, 17:24, 18:4, 20:16 prefer ^[1] - 19:22 preference ^[2] - 15:12, 20:10 prehearing ^[6] - 2:3, 2:7, 2:11, 2:13, 5:20, 21:25 preparation ^[1] - 12:19 prepared ^[2] - 6:8, 10:10 present ^[4] - 6:1, 13:1, 14:5, 17:10 presentation ^[1] - 14:20 presented ^[1] - 13:2 preserve ^[1] - 8:16 president ^[1] - 11:5 pretty ^[1] - 9:3 primary ^[2] - 4:21, 6:18 privy ^[1] - 9:22 procedure ^[1] - 2:8 process ^[1] - 9:17 produce ^[1] - 13:14 productive ^[1] - 21:23 proof ^[1] - 9:9 proposed ^[1] - 14:25 protection ^[1] - 10:7 provide ^[3] - 7:14, 17:20, 17:21 PSC ^[5] - 2:23, 9:19, 10:11, 13:20, 15:1 PU-22-391 ^[1] - 2:5 public ^[5] - 4:24, 5:2, 5:5, 21:5 Public ^[3] - 2:3, 2:4, 2:22 put ^[4] - 5:20, 9:17, 18:17, 19:14 putting ^[1] - 18:11	Q questions ^[1] - 12:8 quit ^[1] - 9:22 R raise ^[1] - 8:11 Randy ^[1] - 3:14 range ^[3] - 6:20, 6:24, 10:22 Rastetter ^[1] - 9:14 rather ^[1] - 18:25 read ^[1] - 15:2 really ^[4] - 5:9, 5:23, 9:13, 11:21 reason ^[1] - 12:22 reconsideration ^[1] - 10:9 record ^[4] - 2:12, 2:19, 8:17, 21:24 regard ^[1] - 15:7 regarding ^[1] - 4:18 relation ^[1] - 13:7 report ^[1] - 10:11 represent ^[1] - 2:15 representative ^[1] - 10:23 request ^[12] - 5:3, 8:13, 8:24, 11:18, 14:12, 14:24, 15:6, 15:8, 15:14, 15:22, 16:4, 17:1 requested ^[4] - 13:14, 15:2, 16:25, 21:6 requesting ^[4] - 12:25, 16:23, 17:8, 19:17 requests ^[1] - 14:25 require ^[1] - 7:17 required ^[1] - 14:1 reroute ^[1] - 12:1 reserve ^[1] - 18:19 Resources ^[1] - 11:7 resources ^[1] - 20:20 responding ^[1] - 11:21 response ^[1] - 15:4 responses ^[1] - 19:8 rest ^[1] - 12:4 retired ^[1] - 9:22 reversed ^[1] - 12:15 Riley ^[1] - 11:1 role ^[1] - 18:21 round ^[2] - 2:9, 4:21 run ^[3] - 8:20, 10:9, 19:1 S safe ^[1] - 10:25	sandbagging ^[1] - 8:15 schedule ^[1] - 20:3 scheduled ^[5] - 2:2, 2:7, 4:20, 4:24, 15:1 Schmidt ^[1] - 6:23 SCHOCK ^[1] - 21:19 Schock ^[2] - 2:23, 21:16 Scott ^[1] - 10:18 SCS ^[2] - 2:4, 2:25 second ^[1] - 16:13 see ^[8] - 3:12, 7:21, 9:11, 10:17, 14:10, 14:16, 20:18, 21:4 send ^[1] - 15:22 sense ^[1] - 19:20 separate ^[3] - 15:6, 15:7, 15:13 Service ^[3] - 2:3, 2:5, 2:22 setting ^[1] - 13:9 shooting ^[1] - 17:25 short ^[2] - 15:22, 17:25 similar ^[2] - 6:23, 8:12 solely ^[1] - 8:16 solid ^[1] - 12:3 sometimes ^[1] - 5:22 sorry ^[1] - 7:12 sorts ^[1] - 8:9 special ^[1] - 2:21 specifically ^[1] - 16:9 spent ^[1] - 5:24 stand ^[1] - 15:10 stand-alone ^[1] - 15:10 stars ^[1] - 8:9 start ^[4] - 2:18, 4:16, 6:3, 8:22 starts ^[1] - 12:13 state ^[2] - 3:6, 3:7 states ^[1] - 11:12 Steve ^[1] - 3:9 stuff ^[1] - 7:19 sub ^[1] - 10:16 subject ^[1] - 17:5 submitted ^[1] - 12:24 subpoena ^[3] - 9:16, 11:1, 13:25 substantive ^[1] - 18:21 Summit ^[20] - 8:11, 9:9, 10:2, 11:12, 11:22, 12:1, 13:2, 13:5, 13:9, 13:13, 13:16, 13:21, 14:5, 14:20, 16:22, 17:3, 17:4, 17:5, 19:16 Summit's ^[5] - 6:4, 13:20, 13:22, 16:9, 19:8	Supreme ^[1] - 12:14 suspect ^[3] - 10:19, 10:21, 10:22 T technical ^[18] - 8:13, 8:24, 8:25, 11:16, 12:25, 14:12, 14:25, 15:2, 16:4, 16:10, 16:15, 16:23, 17:3, 17:6, 17:11, 19:21, 20:8, 20:20 terms ^[3] - 13:13, 14:20, 18:18 testified ^[3] - 10:21, 13:23 testify ^[4] - 7:7, 10:20, 11:9, 17:4 testifying ^[1] - 12:20 testimony ^[11] - 5:10, 5:13, 5:21, 6:16, 6:17, 6:19, 10:4, 11:13, 18:5, 21:5 Tharaldson ^[1] - 11:3 themselves ^[1] - 2:16 they've ^[2] - 9:9, 17:1 thinking ^[3] - 6:15, 7:7, 21:18 third ^[1] - 12:7 thoughts ^[1] - 20:10 three ^[9] - 6:20, 10:24, 11:23, 11:25, 17:14, 17:21, 21:2, 21:3 three-hour ^[1] - 6:20 throughout ^[1] - 5:6 timeframe ^[1] - 10:24 today ^[4] - 14:16, 17:1, 21:9, 21:22 topic ^[1] - 19:24 topics ^[5] - 13:15, 13:16, 13:18, 18:23, 19:18 total ^[1] - 11:16 totality ^[1] - 8:18 towards ^[1] - 5:12 Transport ^[2] - 2:4, 3:1 trial ^[7] - 12:12, 12:15, 12:17, 12:18, 12:20, 12:21 try ^[4] - 5:7, 5:11, 5:14, 5:15 trying ^[1] - 20:19 two ^[4] - 9:5, 12:17, 14:4, 15:1 two-part ^[1] - 9:5 two-week ^[1] - 12:17 type ^[3] - 7:20, 8:11, 19:17
--	--	---	--	---

U	17:17, 17:20, 17:21, 18:1, 18:12, 18:17, 19:16, 19:17, 19:18 wondering ^[1] - 20:20 word ^[1] - 15:15 works ^[1] - 6:9
under ^[1] - 13:24 understood ^[1] - 20:12 unfortunately ^[1] - 11:20 UNIDENTIFIED ^[2] - 22:2, 22:3 union ^[1] - 4:3 unless ^[1] - 8:8 unnecessary ^[1] - 10:3 up ^[4] - 5:10, 5:14, 16:25, 17:21 upcoming ^[2] - 2:8, 4:19	Z
V	Zachary ^[1] - 2:20 Zaste ^[1] - 3:20 Zoller ^[2] - 6:20, 6:23 ZOMER ^[4] - 3:24, 18:10, 19:13, 20:12 Zomer ^[4] - 3:25, 18:10, 19:12, 20:7 Zoom ^[1] - 2:13
W	
Wade ^[2] - 6:15, 9:25 Wahpeton ^[1] - 4:23 waiting ^[1] - 14:15 waiver ^[3] - 8:11, 13:5 waiving ^[1] - 8:17 Watford ^[1] - 11:1 week ^[17] - 4:20, 5:19, 7:13, 8:4, 8:6, 8:7, 12:10, 12:11, 12:17, 12:21, 13:3, 20:3, 20:5, 20:9, 20:19, 21:1, 21:10 week-long ^[1] - 4:20 whole ^[2] - 9:17, 12:15 wife ^[1] - 10:19 willing ^[2] - 11:8, 16:11 witness ^[21] - 5:10, 5:13, 5:18, 6:18, 7:1, 8:3, 8:14, 9:3, 12:24, 13:8, 14:6, 15:14, 15:16, 15:21, 16:3, 16:9, 17:2, 17:14, 17:25, 18:4 witnesses ^[35] - 6:1, 6:4, 6:8, 7:6, 9:6, 9:10, 10:5, 11:23, 12:19, 13:1, 13:2, 13:7, 13:9, 13:13, 13:14, 13:16, 13:22, 13:25, 14:5, 14:20, 16:9, 16:21, 16:22, 17:3, 17:9, 17:16,	